

PRIVACY AND CIVIL LIBERTIES OVERSIGHT BOARD

Mr. LEAHY. Mr. President, recent press reports reveal that despite its creation more than a year ago, the Privacy and Civil Liberties Oversight Board has yet to hire any staff members or even hold a single meeting. This board was established by a law signed in December 2004 in response to recommendations from the 9/11 Commission. Now, several months into 2006, we learn from a Newsweek article that the board's members will finally be sworn in at the White House this month. I will ask unanimous consent that a copy of this article be printed in the RECORD. Starting up the work of this important board, particularly in this time of unprecedented intrusion into the privacy of Americans by the executive branch, is shamefully overdue.

On December 14, 2004, the President signed into law the Intelligence Reform and Terrorism Prevention Act of 2004. Section 1061 of this act implemented a 9/11 Commission recommendation to establish an independent board within the Executive Office of the President to fill a clear void in Government for protecting Americans' liberties.

Creating the board was no easy feat. The Bush-Cheney administration initially resisted the 9/11 Commission's recommendation for a privacy board, unpersuasively asserting that it was already protecting privacy and civil liberties. The administration then tried to circumvent a congressionally authorized, independent board by issuing an Executive order establishing an anemic alternative. That entity was not independent, had no authority to access information, had little accountability, and was comprised solely of administration officials from the law enforcement and intelligence communities—the very communities in need of oversight. It was the proverbial case of the fox guarding the henhouse. But many of us in Congress were committed to creating an effective board in keeping with the 9/11 Commission's recommendations.

We succeeded, and the President signed the bill creating the board well over a year ago, but the White House's delays and resistance continued. Last May 11, I joined Senators DURBIN, COLLINS, and LIEBERMAN in writing to the President to inquire why there had not yet been any nominations and to urge him to nominate board members as soon as possible. We also expressed concern about the inadequate funding in the White House budget proposal, which would only have provided an underwhelming and insufficient \$750,000 for its operations. Fortunately, the Transportation, Treasury, and HUD Appropriations Subcommittee, on which I serve, raised the amount to \$1.5 million to ensure a better start for the board.

President Bush waited until June of last year to appoint three members of

the board, and to nominate the chairman and vice chairman of the board, who were confirmed by the Senate last month. No board members have yet been sworn in. Meanwhile, as Newsweek reported, the White House's new budget, released last month, listed no money for the Privacy and Civil Liberties Oversight Board. Administration officials have said that this omission came only because they decided not to itemize funding for offices within the White House, but they could not explain why other White House offices were individually listed, yet this board was not.

Regrettably, the delays and insufficient funds suggest that the Bush-Cheney administration is simply going through the motions, rather than following through on a meaningful commitment to the Privacy Board. As the Chairman of the 9/11 Commission said, "The Administration was never interested in this."

This board is too important for us to simply go through the motions. Prior to the board, there was no office within the Government to oversee the collective impact of Government actions and powers on our liberties. This is a critical blind spot. We have increased and consolidated the authority of an already-powerful Government in an effort to address the realities of terrorism and modern warfare. As Lee Hamilton, Vice Chairman of the 9/11 Commission, noted in a Judiciary Committee hearing on August 19, 2004, these developments represent "an astounding intrusion in the lives of ordinary Americans that is routine today in government."

In the months since Mr. Hamilton made this statement, we have learned of reports of far more disturbing and unprecedented intrusions into the lives of Americans, including warrantless wiretapping in violation of the laws of the land, as well as surveillance of ordinary Americans that may include a group of Quakers in Vermont. It is more important than ever to have a meaningful entity ensuring that the Government pursue crucial antiterrorism efforts without giving up the privacy and civil liberties so important to all Americans.

The delays in setting up the Privacy and Civil Liberties Oversight Board and the failures to properly fund it show that the Bush-Cheney administration does not take this responsibility seriously. We must make sure that we do take it seriously, on behalf of the American people.

I ask unanimous consent to have printed in the RECORD the Newsweek article to which I referred.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From Newsweek, March 13, 2006 issue]

WATCHDOG: WHAT EVER HAPPENED TO THE
CIVIL LIBERTIES BOARD?

(By Michael Isikoff)

For more than a year, the Privacy and Civil Liberties Oversight Board has been the

most invisible office in the White House. Created by Congress in December 2004 as a result of the recommendations of the 9/11 Commission, the board has never hired a staff or even held a meeting. Next week, NEWSWEEK has learned, that is due to finally change when the board's five members are slated to be sworn in at the White House and convene their first session. Board members tell NEWSWEEK the panel intends to immediately tackle contentious issues like the president's domestic wiretapping program, the Patriot Act and Pentagon data mining. But critics are furious the process has taken this long—and question whether the White House intends to treat the panel as anything more than window dressing. The delay is "outrageous, considering how long it's been since the bill [creating the board] was passed," said Thomas Kean, who chaired the 9/11 Commission. "The administration was never interested in this."

Renewed concerns about the White House's commitment came just a few weeks ago when President Bush's new budget was released—with no listing for money for the civil liberties board. Alex Conant, a spokesman for the Office of Management and Budget, denied to NEWSWEEK the White House was trying to kill the panel by starving it of funds. "It will be fully funded," he said, explaining that the board wasn't in the budget this year because officials decided not to itemize funding levels for particular offices within the White House. When a reporter pointed out that funding for other White House offices such as the National Security Council were listed in the budget, Conant said: "I have no explanation."

The funding snafu is only the latest setback. Kean said the 9/11 Commission had pushed hard for the board to ensure that some agency within the government would specifically review potential abuses at a time vastly expanded powers were being given to U.S. intel and law-enforcement agencies. But the White House, and congressional leaders, resisted and sharply restricted its scope, denying the board basic tools like subpoena power. Bush didn't nominate members of the board until June 2005—six months after the panel was created—and they weren't confirmed until last month. The chair of the board is Carol Dinkins, a former senior Justice official under Ronald Reagan and former law partner of Attorney General Alberto Gonzales. Dinkins did not respond to requests for comment.

PASSAGE OF H.R. 32

Mr. CORNYN. Mr. President, I rise today to compliment my friends in the House of Representatives for passing expeditiously H.R. 32—the Stop Counterfeiting in Manufactured Goods Act—as amended by the Senate.

In addition to a few technical changes, I am pleased that the bill included the entirety of S. 1095, the Protecting American Goods and Services Act, introduced last year by myself and Senator LEAHY.

I am particularly pleased to work with the senior Senator from Vermont in our continued bipartisan effort to protect intellectual property rights as well as to work on other important issues. Last year, we worked together on a matter near and dear to my heart—good government legislation related to the Freedom of Information Act, and it indeed has been a pleasure to work with him again. His staff has